

UTAH SCHOOL LAW UPDATE

Utah State Office of Education

June 2004

MANAGING RELIGIOUS BEHAVIOR

Most teachers have learned, many times over, the proper method for teaching about religion as part of their courses.

But there is another use of religion that has reared its ugly head — expressing one's own beliefs as part of a classroom management technique.

In recent months, we have learned about educators spending class time to harangue students about their behavior with blatantly inappropriate references to the educator's own beliefs.

It should be clear to all educators that taking class time to explain your personal religious views is not acceptable —and violates state law. You may wear religiously distinctive clothing

or jewelry that is not distracting, you may not describe its sacred nature to your students.

Included in this prohibition are educators dropping to their knees and pretending to pray when students are misbehaving or telling students the educator believes lying



results in eternal consequences. Also included is encouraging students to

swear on the Bible, reading the Bible while students are taking tests, or using a student's known religious beliefs to intimidate the student ("I will see you on Sunday and I know what you did here today").

Religion is not to be used as a behavioral management tool in public schools.

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The Utah Professional Practices Advisory Commission and the Utah State Board of Education will not meet in the month of July.

Consequently, the editors of the Utah Education Law Update will also take a break in the month of July.

We will return at the first of August.

Inside this issue:

Professional Prac- 2 tices Case Law

Eye On Legisla- 2 tion

Recent Education 3 Cases

UPPAC Member Profile

Your Questions 3



UPPAC CASES

- The Utah State Board of Education
- The Professional Practices
 Commission issued a letter of reprimand to Alema Teo for inappropriately using physical force against a student.
- The State Superintendent solicited nominations for three open positions on the Commission. Ten teachers and seven educators with nonteaching assignments applied. Appointments should be finalized prior to June. 30

UPPAC Cases of the Month

Perhaps it is a natural byproduct of the rapidly approaching summer vacation. Whatever the reason, UPPAC has received an unusual number of complaints about teacher's showing inappropriate videos in class.

A one-time mistake about the content of a video is unlikely to result in licensing action, unless the video turns out to be pornographic.

But when the mistake is compounded with other behavior, discipline may be taken against the educator's license.

For example, the 6th Circuit Court of Appeals recently upheld the suspension of a teacher who showed inappropriate TV shows to her elementary class, grabbed students by the arm or clothing, cursed at the students and allowed the students to eat throughout the day. <u>Jefferson v. Jefferson County Public</u> School, (2004).

UPPAC has similarly taken action against educators who violate multiple district policies

(Continued on page 2)

Eye On Legislation

Where does our U.S. Senate delegation stand on education issues? There are a few indicators.

In one of the Senate's first votes related to the reauthorization of the Individuals with Disabilities Education Act, both of Utah's senators voted against an amendment which would have **mandated** funding increases each year for six years to fulfill the promise of 40% funding made decades ago.

Senators Hatch and Bennett voted in support of a bill that would **authorize**

increases for the next seven years. The bill does not guarantee that the appropriations will actually be made.

Hatch's last press statement (as posted on his Web-



Sen. Orrin Hatch

site) on public education was his Oct. 9, 2003 call for a congressional study of the funding gap between western and eastern schools. The site does not indicate what response Sen. Hatch received or if he has continued to pursue the matter. The site currently highlights his stand on the definition of marriage.

Both Hatch and Bennett state their support for state and local control of education. Sen. Bennett also notes (bennett.senate.gov) that he voted against NCLB. A press release clarifies that Sen. Bennett supports Pres. Bush's priorities as expressed in NCLB but felt Congress had removed many of the "president's innovative, worthwhile proposals and cut back on many of his other initiatives."

Sen. Bennett also argued in favor of the pilot voucher program for Washington, D.C.



His Website shows his last education related press release was issued in June of 2003, announcing a grant from the U.S. Dept. of Education to Western Governors University.

Sen. Robert Bennett Sen. Bennett's website also ad-

dresses the \$1.5 million for computerized assessments, \$1 million for educator training and "nearly \$2 million for reading and training materials for small rural schools around the state" he has secured to help Utah schools meet NCLB requirements.

Recent Education Cases

It is always refreshing to hear about students actively searching for something to read. It is always distressing to hear about unwarrented censorship of their choices by schools.

A federal district court in Arkansas is the latest to protect the rights of students to read the same books as their peers across the nation.

The Cedarville School Board decided to remove all Harry Potter books from general circulation in

the library. Student's could only check out the books with written parental permission.

The Board decided to take this action because it felt the books promoted the religion of witchcraft and encouraged students to disobey school rules.

The court held that the policy was not justified by the Board's unproven concerns. The Board had no evidence of any acts of disobedience attributable to a student reading the books and it could not prohibit students from reading based on the viewpoints expressed in the book. Counts v. Cedarville School District, (W.D. Ark. 2003).

Another court refused to censor, as it were, a teacher's discipline file. The appellate court of Connecticut upheld a determination by the state's Freedom of Information Commission that a disciplinary

(Continued on page 3)

UPPAC cases cont.

(Continued from page 1)

or whose actions exposed students to detrimental materials.

For instance, UPPAC issued a letter of warning to an educator who allowed students to view inappropriate, though not pornographic, material he found on the Internet.

On the other end, UPPAC suspended the license of a teacher who inadvertently showed portions of a pornographic video in class.

The educator did not intend to

show the video to the class, but there is no sound educational reason for



keeping pornography at school. Students got more than an eyeful when he popped the tape in and walked away without paying attention to the content that was on the screen.

Districts have policies on the supplemental materials educator's may use for very sound reasons. Educators should ensure that a video presentation is appropriate for the age level of the students and complies with policy **before** playing the video in class.

Utah State Office of Education Page 2

UPPAC Member Profile—

Dr. Michael Pratt began his education career as an elementary school teacher in 1975 at Willow Canyon in Sandy, Utah.

While teaching, Dr. Pratt pursued his M.Ed., which he earned in 1979. In 1982, Dr. Pratt began his long service as an elementary school principal in Alpine district. He continued his own education, earning an Ed.S. in 1983 and an Ed.D in 1989. His Ed.D dissertation was well-suited to a UPPAC member; "The Status and Effectiveness of Teacher Remediation in Utah."

Dr. Pratt recently accepted the po-

sition of Administrator of Schools K-6 in Alpine District.

In his free time from 1987-1999, Dr. Pratt served as an adjunct faculty member at Brigham Young University. He filled the same position at Weber State University from 1995-1997.



Michael Pratt

But all of those activities were

still not enough for Dr. Pratt. He also served, and continues to serve, on the Alpine Administrative Association Board, the IHC Community Outreach Council and as Cluster Leader.

Dr. Pratt has also been a member of the Utah Mentor Principals Alliance and participated in the Principals' Academy.

Dr. Pratt's other interests include serving on the Foster Grandparents' Advisory Council, and the Human Rights Committee and 504 Committee for Alpine District.

Your Questions

O: Can the district monitor, and even delete, emails I send or receive on my school computer?

A: Absolutely. An educator at any

level has no expectation of privacy in his or her district provided email. or other computer files stored on district equipment. The district can monitor personal and professional email use, without notice to the employees. It may also reproduce emails of questionable content or that suggest an employee is abusing the privilege of district-provided

Is it legal to . . . ?

email.

In addition, educators are public employees. That means an educator's emails are public documents; if a reporter calls and asks an educator or an educator's employer for emails, the educator would be required by the state open records law to provide all emails, except those that fit within the exceptions to the Government Records Access and Management Act.

The best way to prevent an email griping about a colleague, parent, student, etc. from becoming embarrassingly public, is to not send anything in writing that the educator would not want reproduced in a newspaper headline.

O: Don't I have a First Amendment

Recent Cases Cont.

(Continued from page 2)

agreement between a teacher and school district is public information and must be disclosed. Wiese v. Freedom of Information Comm'n (2004)

The teacher showed his American government class a video the district deemed age inappropriate. The teacher knew there was an issue with the video and discussed with his class the likelihood that he would be disciplined for showing it.

In resolution of the issue, the teacher, superintendent and the teacher's union representative

signed an agreement detailing the punishment the teacher would face



any future violations. Not long after, a reporter asked for any documents related to the video incident. The superin-

fied the teacher that he intended to release the agreement and the teacher appealed to the state Freedom of Information Commission.

The Commission ruled that the document was a disciplinary matter, not an evaluation of the teacher. Evaluations are not public information; final disciplinary decisions are.

The court upheld the Commission noting that

"Simply because a document relates to an activity that takes place on school grounds, during school hours or during classroom instruction time does not always make that document a performance evaluation that is exempt from freedom of information disclosure requirements."

Utah State Office of Education Page 3

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The Utah Professional Practices Advisory Commission, as an advisory commission to the Utah State Board of Education, sets standards of professional performance, competence and ethical conduct for persons holding licenses issued by the Board.

The Government and Legislative Relations Section at the Utah State Office of provides information, direction and support to school districts, other state agencies, teachers and the general public on current legal issues, public education law, educator discipline, professional standards, and legislation.

Our website also provides information such as Board and UPPAC rules, model forms, reporting forms for alleged educator misconduct, curriculum guides, licensing information, NCLB information, statistical information about Utah schools and districts and links to each department at the state office.

Your Questions Cont.

 $(Continued\ from\ page\ 3)$

right to discuss problems with the school at school?

A: Yes, within certain limits.

Educators have a First Amendment right to speak publicly about matters of public concern. An educator can comment with his colleagues about the state of education funding and may even express his or her displeasure at a board policy decision. Educators are also free to discuss personal issues with their adult friends in the faculty room.

But a personal issue with a specific administrator is not a matter of public concern, nor may educators spend school time or other resources bad-mouthing the school or district.

An educator, for instance, who is sent to a conference at school expense (including the expense for a substitute) and uses the conference to air his or her personal grievances is not protected by the First Amendment.

Nor does the First Amendment provide the educator with any right to send mass emails from his

school computer or to parents using class lists to complain about a personal issue with the district, a supervisor, a parent, etc.

In short, the First Amendment does not give the educa-

tor any right to disrupt the school environment or take on personal crusades at school expense.

In addition. educators who use private information about students or colleagues gleaned from their position as an educator may find themselves facing personal liability for violations of privacy.

Want to discuss the war in Iraq

with senior high school students? Fine. (Just don't ask the kids their or their families' personal stands on the war or try to coerce them into accepting your point of view).

Want to rally students for a sit-in at the district in protest of your nonrenewal? Be prepared to face the consequences which may include revo-

cation of your teaching license, civil damages and criminal charges.